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Attorneys for Defendant
Universal Music Group Distribution Corp.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSE ORTIZ p/k/a JAO, :

Plaintiff, :

-against- : Case No. 07 CV 3897 (RWS)

GUITIAN BROTHERS MUSIC INC., :
OSCAR GUITIAN, and UNIVERSAL MUSIC :
GROUP DISTRIBUTION, INC., :

Defendants. :
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**DEFENDANT UNIVERSAL'S STATEMENT OF UNDISPUTED FACTS
PURSUANT TO LOCAL CIVIL RULE 56.1**

Pursuant to Local Civil Rule 56.1 of the United States District Court for the Southern District of New York, defendant Universal Music Group Distribution Corp. ("Universal"), named incorrectly herein as Universal Music Group Distribution, Inc., by its attorneys, Loeb & Loeb LLP, respectfully submits the following statement of undisputed material facts as to which there is no genuine issue to be tried. The following facts are assumed to be true solely for purposes of Universal's summary judgment motion.

The Motion Picture and Don Dinero DVD

1. In 2003 defendant Oscar Guitian (“Guitian”), together with his brother Jose Manuel Guitian professionally known as Don Dinero (“Dinero”), solicited Plaintiff to create a series of musical works to be used as the instrumental score (the “Score”) for a motion picture entitled *Don Dinero – Su Vida Y La Calle* (the “Motion Picture”). Compl. ¶ 22.¹

2. Plaintiff composed the Score in the summer of 2003, and made several trips to Miami in July, August and September 2003 “in order to edit and incorporate” the Score into the Motion Picture. Compl. ¶¶ 27, 31.

3. The Motion Picture was released, distributed and sold nationwide to the general public on DVD (the “Dinero DVD”) beginning on or about November 25, 2003. Compl. ¶¶ 36, 38.

4. Plaintiff is identified as one of the “producers” of the musical score in the closing credits of the Motion Picture and on the packaging of the DVD, which reads “Original music scored by da compadres (JAO & Noodles).” Compl. ¶ 37 ; Kossowicz Dec., Exs. A & B.

5. Plaintiff, JAO, also appears on camera in substantial portions of the Motion Picture. Kossowicz Dec., Ex. B.

6. Despite demand by Plaintiff, none of the defendants paid Plaintiff, among other things, the royalties for their “publishing of his work which is due to Plaintiff through his ownership of the copyrights in the [Score].” Compl. ¶¶ 42, 44.

¹ References to the paragraphs of Plaintiff’s complaint filed in this matter on May 18, 2007, shall hereinafter be in the form of “Compl. ¶ __.”

The Copyright Notices and 2003 Copyright Registration for the Motion Picture Identify Universal's Affiliate and Guitian Brothers Music as the Sole Copyright Owners of the Entire Work, Including the Score.

7. The DVD was distributed nationwide and bore copyright notices in several places that identify "Universal Music Latino and Guitian Brothers Music" as the sole owners of the copyright in the Motion Picture. Kossowicz Dec. ¶ 6 & Exs. A & B. *See* Compl. ¶¶ 36, 38.

8. Specifically, the copyright notice for the Motion Picture on the label of the DVD and the exterior package of the DVD each bear the following copyright notice: "(P) & (C) 2003 UNIVERSAL MUSIC LATINO/GUITIAN BROTHERS MUSIC." Kossowicz Dec. ¶ 7 & Ex. A.

9. Universal Music Latino is a division of UMG Recordings, Inc. Defendant Universal is the affiliated music and video distribution entity for UMG Recordings, Inc. Kossowicz Dec. ¶ 8.

10. Universal Music Latino submitted a copyright registration application to the United States Copyright Office for the Motion Picture on DVD, including the "Entire Cinematographic Work/Pictorial Matter/Line Notes." The Copyright Office issued the copyright registration for the Motion Picture on the DVD to Universal Music Latino and Guitian Brothers Music, and issued registration certificate no. PA 1-216-943, effective as of December 24, 2003. Kossowicz Dec. ¶ 9 & Ex. C.

Plaintiff Did Not Submit His Registration Until 2005.

11. On or about August 3, 2005, Plaintiff obtained a copyright registration for the 13 works which comprise the Score. Compl. ¶ 34; Slotnick Decl., Ex. A.

12. Plaintiff commenced this action on May 18, 2007. *See generally* Compl.

Dated: New York, New York

April 30, 2008

LOEB & LOEB LLP

By: 

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